

EXHIBIT 40

[Emblem: SENATE,
COMMONWEALTH
OF PUERTO RICO]

JOINT RES. 33 – 20 21

SENATE

Commonwealth of Puerto Rico

**THE CAPITOL
SAN JUAN, PUERTO RICO 00901**

I, **Yamil Rivera Velez**, Secretary of the Senate of Puerto Rico,

CERTIFY:

That **Senate Joint Resolution 171**, titled:

“JOINT RESOLUTION

To order the Office of Management and Budget (OMB) and the Retirement Systems Administration (RSA) to take all necessary measures and require the eligible agencies, public corporations, and municipalities to take the appropriate actions to implement the Early Retirement Incentive Program, created under Act 80–2020, known as the “Early Retirement Incentive Program and Justice for our Public Servants Act” for the non-essential employees who have been identified at each entity, without impairing the rights of essential employees to avail themselves of said early retirement incentive, once the corresponding analysis and budgetary impact has been completed, in accordance with the reengineering of positions at each entity, and for other related purposes.”

has been passed by the Senate of Puerto Rico and House of Representatives, as expressed in the enclosed document.

IN WITNESS WHEREOF, and to notify the Governor of Puerto Rico, I hereby issue the present document at my offices at the Capitol, San Juan, Puerto Rico, on the fifteenth (15th) of November of two thousand and twenty-one and place upon it the seal of the Senate of Puerto Rico.

[signature]
Yamil Rivera Velez
Secretary of the Senate

(Senate Joint Res. 171)

JOINT RESOLUTION

To order the Office of Management and Budget (OMB) and the Retirement Systems Administration (RSA) to take all necessary measures and require the eligible agencies, public corporations, and municipalities to take the appropriate actions to implement the Early Retirement Incentive Program, created under Act 80-2020, known as the "Early Retirement Incentive Program and Justice for our Public Servants Act" for the non-essential employees who have been identified at each entity, without impairing the rights of essential employees to avail themselves of said early retirement incentive, once the corresponding analysis and budgetary impact has been completed, in accordance with the reengineering of positions at each entity, and for other related purposes.

STATEMENT OF REASONS

It is of great concern and detrimental to the retirement expectations of our public employees, that over one (1) year since the enactment of Act 80-2020, known as the "Early Retirement Incentive Program and Justice for our Public Servants Act", it has not been fully implemented, and, therefore, nor has the retirement of the participants in this program. This is particularly so, given that from the start directions were issued by the Financial Oversight and Management Board (FOMB) requesting public information and budgetary impact projects with regard to potential non-compliance with the Certified Fiscal Plan, in accordance with the PROMESA Federal Law. These pronouncements have resulted in the Government postponing the entry into effect of the Early Retirement Incentive Program under said Act 80-2020, until reaching certain understandings with the Board related to the program's scope and impact, thus depriving thousands of our municipal and Government employees of this retirement window.

Accordingly, by way of Senate Resolution 32, the Puerto Rico Senate Governance Committee has conducted an exhaustive inquiry into the alternatives and plans that have been implemented or projected by the Government, in order to comply with Act 80-2020, *supra*. To that end, the Governance Committee held four (4) Public Hearings during the current year, on March 12, April 6, May 14, and July 8, 2021. The hearings were attended by representatives from the following agencies: Office of the Administration and Transformation of Human Resources (OATHR), the Fiscal Agency and Financial Advisory Authority (FAFAA), the Office of Management and Budget (OMB), Department of Labor and Human Resources (DLHR), and the Retirement

Systems Administration (RSA). In addition, communications were received from various public servants and officials of the Government agencies, the Association of Mayors, and Federación de Alcaldes de Puerto Rico, Inc. [Puerto Rico Federation of Mayors, Inc.], as well as affected employees. In other words, there was broad participation from all the components, responsible parties, and potential beneficiaries of this Retirement Program.

Consistent with this process, the Governance Committee filed a First Partial Report on S.R. 32, which was received by this Senate at the Ordinary Session that took place on August 16, 2021, whose recommendations include introducing a Joint Resolution mandating the implementation of Act 80-2020, *supra*, in a first stage, for the non-essential employees identified at the agencies. In summary, this recommendation arises from the consideration and discussion of this matter, as described in the aforementioned Partial Report, essentially through the processes carried out by the OMB, FAFAA, RSA, and the eligible Government agencies and municipalities to identify and determine eligibility of employees covered under Act 447 of May 15, 1951, as amended, and Act No. 1 of April 16, 1990, as amended, who are interested in participating in this early retirement incentive program.

Specifically, this analysis of eligible employees by agencies, public corporations and municipalities distinguishes between essential and non-essential employees for each corresponding entity's operations, pursuant to Article 9 of Act 80-2020, *supra*, with regard to vacant positions, recruitment, and determined savings. This is essential, because to authorize filling vacant positions of employees who provide essential services, and who choose early retirement, would have a marked impact on the projected savings sought by this measure. Furthermore, eliminating the positions of non-essential employees would translate into immediate payroll savings for the eligible entities of fifty percent (50%) of their salaries.

Specifically, the presentation by the Executive Director of the Retirement Systems Administration (RSA), Mr. Luis M. Collazo Rodríguez, highlighted that in accordance with the forms and applications received on the platform set up by the OMB, a total of 10,553 employees took advantage of the program. Of these, the agencies identified 6,564 as essential employees and 3,989 as non-essential employees, as well as the corresponding municipal employees. Thus, this process under Act 80-2020, *supra*, has been completed for employees who applied for and are eligible to participate in the Retirement Program, under the essential or non-essential categories, with their retirement remaining pending.

It is thus important to highlight that Article 8 of Act 80-2020 sets forth the obligations and duties of the agencies, which include the following: ensuring that participants comply with the established requirements; pay each participant the amount of the lifetime pension under the

program (50% of the salary equivalent to the highest gross annual compensation received during any of the previous three (3) years; payment of the corresponding employer's contribution to the Medical Plan provided by the program (\$100.00 monthly); and discontinue contributions to the Unemployment Insurance fund of the Department of Labor and Human Resources, and the State Insurance Fund (SIF), as of the date on which the employee enters the program, among others. Furthermore, Article 10 provides that the OMB Director, along with the Retirement Systems Administrator (RSA), shall possess all authorities that are necessary or advisable in order to implement it, and, in particular, the authority to require that the agencies take all actions they deem necessary and advisable in order to implement the program; to require from the nominating entities all information that is necessary in order to evaluate the applications; and to prepare the Option Form and establish, by means of a joint Circular Letter, the procedure, terms, and forms to implement the programs and the provisions of this act.

Another essential aspect of this matter is the June 22, 2021 letter from the Financial Oversight Board (FOMB) to Mr. Omar Marrero, Director of the FAFAA, in response to information sent on April 1 with regard to the aforementioned Act 80-2020. In general terms, this letter states that any reform to the pension system must restore the financial equilibrium and be backed by payment guaranties and underscored the point that said Act 80-2020 must not increase the costs of the Certified Fiscal Plan. **Likewise, the FOMB acknowledges that this program could lead to savings at agencies and municipalities under certain conditions, even though most of the Government's data reflect an increase in costs.** (Emphasis added)

In detail, the letter sets forth various recommendations and changes to the act in order to make the program feasible, including amending the Act so as to implement it in stages, in order for the Board to be the one authorizing employees' retirement based on savings to the Fiscal Plan; that the retirement programs be carried out under the new Pension System, known as "Pay As You Go" under Act 106-2017; that each agency commit to eliminating all positions of retiring non-essential employees, and that new positions not be created for these purposes; and that the Government authorize the Municipal Revenue Collection Center (CRIM) from withholding the allocations municipalities in order to pay the allocations corresponding to the "Pay As You Go" System.

With regard to these FOMB proposals, we believe this to be their acknowledgment that Act 80-2020 could be applied in certain scenarios (agencies and municipalities) consistent with the savings parameters of the Certified Financial Plan, even though, as they allege, this would require its implementation in stages, which the Board does not believe is currently allowed by said Act.

Although we agree with the Board's contention that Act 80-2020 can be implemented in stages, we nevertheless disagree with the argument that this action is not allowed under the current structure. To the contrary, the Act precisely establishes different steps or phases for full implementation, such as processes for the eligible employees to apply for participation in the Program, by filling out the Option Forms provided by their employer. Once these completed forms are received, the number of employees who will avail themselves of it will be calculated, and this in turn this will lead to validating the projections of the financial impact on the Government Budget, and the action plans or reorganization measures necessary for the FOMB's execution of the Fiscal plans. In particular, as we have indicated, this includes the crucial determination of whether the employees are essential or not for the functioning of each eligible municipality, public corporation, or agency, which would allow filling the position of the retired employee classified as essential, which would mean honoring 50% of the highest salary received during the previous three (3) years, in addition to the salary of the replacement employee.

Accordingly, in view of the foregoing, we believe it is urgent and legitimate to order the Executive Director of the Office of Management of Budget (OMB), Mr. Juan C. Blanco Urrutia, and the Executive Director of the Retirement Administration System (RSA), Mr. Luis M. Collazo Rodríguez, or their successors, to take such actions as may be required in order to implement the first phase of this Retirement Program for identified non-essential employees whose positions are to be eliminated as they become vacant, according to this act. This is all the more so since, as we have indicated, the FOMB's June 22, 2021 letter to the FAFAA acknowledges that the Early Retirement Incentive Program could lead to savings at agencies and municipalities and that partial implementation is feasible, which we so order in this Joint Resolution. We furthermore firmly establish that this measure constitutes an initial step toward Social Justice, consistent with the context and expectations created for our workers in order for them to take advantage of this early retirement incentive, without impairing the rights of essential employees to take advantage of this retirement, once the corresponding analysis and the budgetary impact of the retirement based on the reengineering of positions at the different entities has been completed.

THE LEGISLATIVE ASSEMBLY OF PUERTO RICO RESOLVES:

Section 1. The Office of Management and Budget (OMB) and the Retirement Systems Administration (RSA) are hereby ordered to take the necessary measures and require the eligible agencies, public corporations, and municipalities, to take the appropriate actions to implement the Early Retirement Incentive Program, created under Act 80-2020, known as the

"Early Retirement Incentive Program and Justice for our Public Servants Act" with regard to non-essential employees who have already been identified at each entity. The foregoing is without prejudice to the rights of essential employees also take advantage of this early retirement, once the corresponding analysis and the budgetary impact of the retirement based on the reengineering of positions at the different entities has been completed, which shall not exceed a period of sixty (60) days following the adoption of this Joint Resolution.

Section 2. A term of thirty (30) business days is granted to the indicated officials to execute what has been ordered herein, and specifically with regard to early retirement of the participants identified as non-essential at the eligible municipalities, public corporations, and agencies, and to submit to the Legislative Assembly, through the respective Secretaries of the House and Senate, a detailed report on the criteria and reasoning of each agency in determining the employees who are to be identified as essential or otherwise, and the reengineering of the corresponding positions.

Section 3. This Joint Resolution shall enter into force immediately upon being passed.

[signature]
Speaker of the House

[signature]
Speaker of the Senate

Passed on December 15, 2021

[signature]
Governor

This Joint Res. of the Senate No. 171
Was received by the Governor
On this date, November 17th
Of 2021 at 2:55 PM
[signature]
Advisor



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TRANSLATOR'S CERTIFICATE OF TRANSLATION

Translation from: Spanish (Puerto Rico) into English (US)
TARGEM Translations Inc.

I, Andreea I. Boscor, ATA-certified Spanish-English #525556, acting as translator at TARGEM Translations Inc., a NEW YORK City corporation, with its principal office at 185 Clymer Street, Brooklyn, NY, 11211, USA, certify that:

the English translated document is a true and accurate translation of the original Spanish and has been translated to the best of my knowledge.

Original Document Name: **20211216120932831**

Signed this 17th day of December 2021



Verify at www.atanet.org/verify

A handwritten signature in blue ink, appearing to read "Andreea I. Boscor".

Andreea I. Boscor

